

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200949030**
Release Date: 12/4/2009

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.
Telephone Number:

Index Number: 1362.04-00

Refer Reply To:
CC:PSI:B01
PLR-129290-09
Date:
August 27, 2009

Legend:

X =

Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State =

A =

B =

Dear :

This letter is in response to your request, dated June 5, 2009, on behalf of X, seeking relief for X to be treated as continuing to be an S corporation under §1362(f) following an inadvertent termination of its S corporation status.

Facts

Based on the material submitted and the representations made within those materials, we believe the relevant facts to be as follows. Y was formed on Date 1 under the laws of State. On Date 2, X, a State corporation, converted to a State limited partnership and on Date 3 filed a Form 8832 electing to be treated as an association taxable as a corporation. Y was the general partner of X and A and B were limited partners. Subsequently, X filed an election to be an S corporation, effective Date 4, but at the time X had an ineligible shareholder. Furthermore, the conversion of X to a State partnership with both general and limited partnership interests may have created a second class of stock.

X and its owners represent that they intended that X would be treated as an S corporation. X represents that it did not obtain the signature of Y on its original Form 2553 based on the advice of its tax advisors. Furthermore, after the parties discovered the problem, steps were taken to cure the problem. First, X redeemed Y's interest in exchange for a cash payment. Simultaneously, X converted to a State limited liability company and filed a Form 8832 to be taxable as a corporation for Federal income tax purposes.

Law and Analysis

Section 1362(a) provides, that a small business corporation may elect to be an S corporation.

Section 1361(a)(1) defines a S corporation as a small business corporation for which an election under § 1362(a) is in effect. Section 1361(b)(1) defines "small business corporation" as a domestic corporation that is not an ineligible corporation and that does not (A) have more than 75 shareholders, (B) have as a shareholder a person (other than an estate, other than a trust described in § 1361(c)(2), and other than an organization described in (c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Under § 1362(d)(2), an election to be an S corporation will be terminated whenever the corporation ceases to be a small business corporation.

Section 1362(f) provides that a corporation is treated as continuing to be a S corporation during the period specified by the Secretary if (1) an election under § 1362(a) by any corporation was terminated under paragraph (2) or (3) of § 1362(d), (2) the Secretary determines that the termination was inadvertent, (3) no later than a reasonable period of time after discovery of the terminating event, steps were taken so that the corporation is once more a small business corporation, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make any adjustments (consistent with

the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to that period.

Section 1.1362-4(b) of the Income Tax Regulations provides that, for purposes of 1.1362-4(a), the determination of whether a termination was inadvertent is made by the Commissioner. The corporation has the burden of establishing that under the relevant facts and circumstances the Commissioner should determine that the termination was inadvertent. The fact that the terminating event was not reasonably within the control of the corporation and was not part of a plan to terminate the election, or the fact that the event took place without the knowledge of the corporation, notwithstanding its due diligence to safeguard itself against such an event, tends to establish that the termination was inadvertent.

Conclusion

Based upon the information submitted and the representations set forth above, we conclude that X's S corporation election was an inadvertent invalid election within the meaning of section 1362(f). In addition, we conclude that if X's conversion from a State corporation to a State partnership with both general and limited interests created a second class of stock, which would have terminated X's S corporation election, that the termination was inadvertent within the meaning of section 1362(f).

Pursuant to the provisions of section 1362(f), X will be treated as continuing to be an S corporation from Date 4 and thereafter, provided that X's subchapter S election is not otherwise terminated under section 1362(d).

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding whether X's original election to be an S corporation was a valid election under § 1362.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this ruling will be sent to the taxpayer representatives.

Sincerely,

David R. Haglund

David R. Haglund
Acting Branch Chief, Branch 1
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: